

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANNAMARIA CESCO-CANCIAN

Appeal No. 1998-2519
Application 08/167,692¹

ON BRIEF

Before CALVERT, COHEN and NASE, Administrative Patent Judges.
CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1
to 19, all the claims remaining in the application.

The claims on appeal are drawn to an absorbent garment,
and are reproduced in the appendix of the appellant's brief.

¹ Application for patent filed December 15, 1993.

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The references applied in the final rejection are:

Weisman et al. (Weisman)	4,610678	Sep. 9, 1986
Widlund et al. (Widlund)	WO 93/17648	Sep. 16, 1993

The appealed claims stand finally rejected on the following grounds:

- (1) Claims 1, 2, 4 to 13, 15, 16, 18 and 19, anticipated by Widlund, under 35 U.S.C. § 102(a);
- (2) Claims 3 and 14, unpatentable over Widlund in view of Weisman, under 35 U.S.C. § 103;
- (3) Claim 17, unpatentable over Widlund, under 35 U.S.C. § 103.

Considering first the rejection of claim 1, we note that although the examiner states in the answer² that the rejection is set forth in Paper No. 11 (the first rejection), neither in Paper No. 11 nor in the answer does the examiner point out where the specific claimed limitations are found in, or compare any of the rejected claims feature by feature with,

² All references herein to the examiner's answer are to the answer mailed on July 6, 1999 (Paper No. 25).

the prior art relied on. See MPEP § 1208, p. 1200-17, item 10(c) and (e)(July 1998). Nevertheless, it appears that the issue involved here is whether Widlund discloses the following underlined limitations recited in the last paragraph of claim 1:

a tummy band formed of an elastic material adapted to stretch in a first direction and a second direction substantially perpendicular to the first direction, the tummy band operatively joined to the outer cover adjacent at least a portion of one of the waist region, the tummy band elastically connecting one end of the absorbent assembly and the outer cover, the first direction being generally parallel to the longitudinal axis of the absorbent assembly.

The examiner seems to take the position that the underlined limitations are readable on the regions 29, 30 of Widlund, even though those regions are disclosed as being essentially stretchable only in the transverse direction (page 14, lines 26 to 29; page 15, lines 4 to 8), because the elastic threads 26 therein

can also stretch at an angle about the child that is 45 degrees below a datum line

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defined as the lateral line of the diaper's waist band about the child and can also stretch in a direction 45 degrees above it, thus Widlund satisfying this requirement. [Paper No. 11, pages 2 to 3].

In response to appellant's argument that such stretching at a 45 degree angle to the waist would not satisfy the requirement of claim 1 that the first direction is "generally parallel to the longitudinal axis of the absorbent assembly" (brief, page 7), the examiner asserts that the recited "longitudinal axis" is not required to extend from the front waist to the rear waist (answer, page 4).

We do not consider the examiner's position to be well taken. Even assuming that the examiner's scenario of stretching at 45 degree angles would satisfy the claim requirement that the elastic material is adapted to stretch in substantially perpendicular first and second directions, claim 1 recites that the absorbent assembly has a longitudinal axis and opposite longitudinally spaced ends, and the tummy band elastically connects one end of the absorbent assembly and the outer cover. Thus, since the ends are defined as

"longitudinally spaced," the longitudinal axis of the absorbent assembly must extend from the end connected to the tummy band to the other end of the assembly; in the Widlund device, this would be from end 22 to end 23, or approximately along line II - II of Fig. 1. The elastic material 26 of Widlund's tummy band 29 or 30 does not stretch generally parallel to this axis, and therefore does not meet claim 1.

On pages 3 and 4 of the answer, the examiner alternatively argues that the elastic film disclosed by Widlund at page 14, line 30 et seq., would satisfy the bidirectional stretch limitation.

In order to anticipate a claim, a reference must disclose every limitation of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). In this case, Widlund does not explicitly disclose that the "elastically stretchable film" is stretchable in two, substantially perpendicular directions, and therefore claim 1 is not anticipated unless this property would be inherent.

A prior art reference does not anticipate by inherency unless it necessarily functions in accordance with, or

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includes, the claimed limitations. Atlas Powder Co. v. IRECO Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1946-47 (Fed. Cir. 1999). Here, it is not apparent to us that an elastically stretchable film as disclosed by Widlund would necessarily be stretchable in two substantially perpendicular directions, and in fact Widlund would tend to indicate that the disclosed film is not, because, after disclosing suitable materials for the film on page 15, lines 1 to 4, Widlund states in lines 4 to 8 that:

A similar elastically stretchable material may also be disposed so that the elastically stretchable regions 29, 30 are essentially stretchable solely in the transverse direction of the diaper.

Accordingly, we conclude that claim 1, and claim 2 dependent thereon, are not anticipated by Widlund.

Independent claim 4 contains limitations which are the same as those underlined in the above-quoted last paragraph of claim 1, and is not anticipated by Widlund for the same reasons as are applicable to claim 1. Dependent claims 5 to 7 are likewise not anticipated.

Independent claims 8 and 13 recite, inter alia, that the claimed suspension member or members are "adapted to stretch

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in a direction generally parallel to the longitudinal axis of the absorbent assembly." As discussed above, the elastically stretchable regions 29, 30 of Widlund are not disclosed, explicitly or inherently, as being stretchable in the claimed direction; therefore, neither these claims, nor dependent claims 9 to 12, 15, 16, 18 and 19, are anticipated.

Rejection (1) will not be sustained.

Rejections (2) and (3)

These rejections will not be sustained, since neither Weisman, nor the argument advanced by the examiner as to claim 17, overcome the deficiencies of Widlund noted above.

Conclusion

The examiner's decision to reject claims 1 to 19 is reversed.

REVERSED

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	IAN A. CALVERT)	
	Administrative Patent Judge)	
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	IRWIN CHARLES COHEN)	BOARD OF
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